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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/742,578

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Fatih M. Ozluturk

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7590

02/08/2005

VOLPE AND KOENIG, P.C.

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PHILADELPHIA, PA 19103

EXAMINER

TON, DANG T

ART UNIT

PAPER NUMBER

2666

DATE MAILED: 02/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/742,578	<b>Applicant(s)</b> OZLUTURK ET AL.	
	<b>Examiner</b> DANG T TON	<b>Art Unit</b> 2666	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 December 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>9/29/2004</u> | 6) <input type="checkbox"/> Other: _____  |

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1. Claims 7-12,21,,23, and 25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 7 line 9, " phase acquisition means" is not clear since it is not known the function of the means. Similar problem exists in claims 8,10,12,21,23,and 25.

In claim 10 line 4, " the first long code" and " the second long code" have no antecedent basis. Similar problem exists in claim 23.

Claims 9 and 11 are rejected since they depend from claim 7.

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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Claims 2-30 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 2-7 of copending Application No. 09/742,990. Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following:

For claims 2-30, the claims 2-7 of the copending applicant number 09/742,990 disclose a system for rapidly acquiring a spreading code used in a code division

multiple access (CDMA) system, comprising:

a code generator for generating a plurality of P long codes, where P is a number of long codes in the plurality of long codes, with each long code having a length N chips, with each long code different from the other long codes in the plurality of long codes;

a transmitter, coupled to said code generator, for transmitting, over a communications channel using radio waves, the plurality of long codes at a plurality of phase angles, respectively, on a carrier signal, with each phase angle in the plurality of phase angles different from other phase angles in the plurality of phase angles, and

an acquisition circuit, coupled to the communications channel, for acquiring from the communications channel using

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said phase-acquisition circuit, the plurality of long codes, respectively, by searching, in parallel, N/P chips of each long code of the plurality of long codes ;

wherein said acquisition circuit acquires from the communications channel using the phase-acquisition circuit, the plurality of long codes from the plurality of phase angles, respectively, of the carrier signal by searching, in parallel, N/P chips of each of the plurality of long codes;

wherein said transmitter transmits the plurality of long codes at the plurality of phase angles, respectively, on the carrier signal, with each phase angle in the plurality of phase angles representing an M-ary phase scheme;

wherein said acquisition circuit acquires from the telecommunications channel using the phase-acquisition circuit, the plurality of long codes, respectively, of the carrier signal by searching, in parallel, N/P chips of a first long code and a second long code;

wherein said generator generates the plurality of long codes from a multiplicity of short codes, with each short code different from other short codes and each short code having a length less than N chips, with a first short code thereby embedded in a first long code and a second short code embedded in a second long code ; and

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wherein said acquisition circuit acquires, from the communications channel using the phase-acquisition circuit the first short code embedded in the first long code and the second short code embedded in the second long code, from the first phase angle and the second phase angle, respectively, by searching, in parallel, N/P chips of the first short code and the second short code.

( Note see claims 2-7 of the copending application).

For claims 1,2,5-13,17-26 and 29-30,the claims 2-7 of the copending application number 09/742,990 disclose all the subject matter of the claimed invention with the exception disclosing method claims ( the claims 2-7 of the copending application number 09/742,990 disclose apparatus/system claims). However using the apparatus claims of the patent to modify/implement the method claims is well-known in the art. Thus, it would have been obvious to the person of ordinary skill in the art at the time of the invention to use the system/apparatus claims as taught by the patent to implement the method claims. The motivation for modifying the apparatus claims 2-7 of the copending application number 09/742,990 into the method claims being that it provides the steps performing the same function as the apparatus claims.

For Claims 3,4,14-17, and 27-28, the claims 2-7 of the

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copending application number 09/742,990 disclose all the subject matter of the claimed invention with the exception of

transmitting the first and second long codes at in phase (I) angle and Quadrature phase (Q) angle in a communications network. However, the I and Q quadrature in phase are well-known in the art. Thus, it would have been obvious to the person of ordinary skill in the art at the time of the invention to use the quadrature in phase of I and Q in the communications network of the claims 2-7 of the copending application number 09/742,990Gibson.

The quadrature in phase of I and Q can be implemented/modified into the network of claims 2-7 of the copending application number 09/742,990 since the claims do teach the phase angles. The motivation for using the quadrature phase I and Q into the communications network of the claims 2-7 of the copending application number 09/742,990 being that it provides much higher utilizations and provides with the I angle a ninety degrees out of phase with the Q angle.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

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3. Applicant's arguments with respect to claims 2-30 have been considered but are moot in view of the new ground(s) of rejection.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANG T TON whose telephone number is 571-272-3171. The examiner can normally be reached on MON-WED, 5:30 AM-6:00 PM and Thur 5:30-9:30 A.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, RAO SEEMA can be reached on 571-272-3174. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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